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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
5

6 ROBERT NALDUCCI,

7 Plaintiff,

8 vs.

9 PETER GEREN, Secretary of the Army,

10 Defendant.  
11


Case No: CV 06-7702 SBA

**ORDER RE FURTHER BRIEFING**

12 Defendant's motion for summary judgment currently is set for hearing for May 19, 2009.  
13 On May 8, 2009, Defendant filed a Supplemental Declaration of Melissa K. Brown in Support of  
14 Motion for Summary Judgment. (See L.R. 7-3(d) (reply papers due at least 14 days prior to the  
15 hearing date).) In the supplemental declaration, Defendant makes additional arguments in support  
16 of his summary judgment motion based on the deposition of Dr. Lennart Suther, which was taken  
17 on May 4, 2009. In fairness to Plaintiff, the Court will allow Plaintiff to file a surreply that  
18 addresses only the issues raised in the supplemental declaration.

19 IT IS HEREBY ORDERED THAT by no later than May 18, 2009, Plaintiff may file a  
20 surreply, no longer than two pages, that addresses the issues presented in Defendant's supplemental  
21 declaration (Docket 89). The motion hearing scheduled for May 19, 2009 is VACATED. The  
22 Court will notify the parties in the event argument on the motion is necessary. However, the Court,  
23 pursuant to its discretion under Federal Rule of Civil Procedure 78(b), may resolve the motion  
24 based on the papers submitted.

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26 Dated: May 12, 2009

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28 Hon. Saundra Brown Armstrong  
United States District Judge